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MEMO ENDORSED

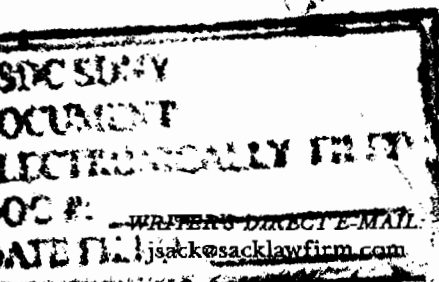
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May 4, 2010

*Application denied. Under FRCP
41(a)(1)(A)(i), Plaintiff's may voluntarily
dismiss without Court approval.*

SO ORDERED:
Cathy Seibel
Cathy Seibel, U.S.D.J.

Dated: 5/5/10



By Fax Only (914-390-4278)
Hon. Cathy Seibel
United States District Court, S.D.N.Y.
300 Quarropas Street
White Plains, NY 10601

Re: George L. Rioseco, et al v. GAMCO Asset Management, Inc.
No. 09 civ. 9396 (CS)

Dear Judge Seibel:

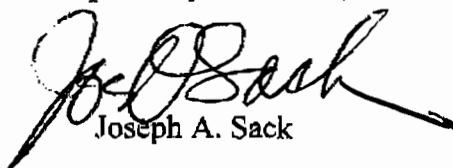
Yesterday, plaintiffs' counsel sent a letter to the Court indicating that plaintiffs had filed a notice of voluntary dismissal, citing "considerable question regarding the Court's subject matter jurisdiction over this action." Based on our conversations with plaintiffs' counsel, this refers to the IAA claim. Plaintiffs' counsel has further informed us that plaintiffs plan to re-file all other remaining claims in state court. Therefore, although plaintiffs' counsel also stated in his letter to the Court that he believes that the filing of the notice of voluntary dismissal "moots the conference currently scheduled for May 6, 2010," we respectfully request that the conference go forward.

During the past 17 months of this dispute, one or all of the plaintiffs have filed an arbitration claim and an amended arbitration claim, attempted to file a second amended arbitration claim, filed a federal complaint, and - after losing the arbitration claim - just a few weeks ago even filed an amended federal complaint to add a class component. If plaintiffs are permitted to alter their strategy yet again by moving to state court, after we already requested and the Court granted a conference on our motion to dismiss, defendant will be subjected to great unfairness and inconvenience. As such, we respectfully request that the Court exercise its discretion, retain supplemental jurisdiction, and decide our motion to dismiss regarding the remaining claims.

As the Court is aware, the "traditional 'values of judicial economy, convenience, fairness, and comity'" are to be applied in deciding whether to exercise supplemental jurisdiction. *Kolari v. N.Y.-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006) (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988)). Especially applicable under the present circumstances, "[i]f the plaintiff has attempted to manipulate the forum, the court should take this behavior into account in determining whether the balance of factors to be considered under the pendant jurisdiction doctrine support a remand in the case." *Cohill* at 357.

Thank you for your consideration. We stand ready to appear for the previously scheduled conference on Thursday at 10:30 a.m.

Respectfully submitted,


Joseph A. Sack

Cc: By Fax Only
Peter D. St. Phillip, Jr., Esq.
Charles J. Moxley, Jr., Esq.

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To: Hon. Cathy Seibel **Fax #:** 914-390-4278
Cc: Feldman Law Group, P.C. **Fax #:** 212-532-8598
From: Joseph G. McKay **Pages (including this cover sheet):** 3
Date: May 4, 2010 **File #:** 08349-58639
Re: Goody, Inc, FMC Holding Corp Adv Mastercraft Industries, Inc & Howard
Civil Action No. 09 Civ. 8914

If problems of clarity or transmission arise, please call **Laura Forman** at 845-565-1100, **Ext. 294**.

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Thank you.

JGM/lmf/552368